

**GUIDELINES FOR OBTAINING A DEFAULT JUDGMENT**  
**U.S. Bankruptcy Court for the Northern District of Oklahoma**  
**\*\*Revised December 16, 2010\*\***

**\* \* OBTAINING A DEFAULT JUDGMENT IS A TWO-STEP PROCESS \* \***

Pursuant to Federal Rule of Civil Procedure 55, made applicable to adversary proceedings by Federal Rule of Bankruptcy Procedure 7055, default encompasses two steps: (1) Entry of Default and (2) Default Judgment.<sup>1</sup>

**STEP ONE: Entry of Default**

Entry of default is a procedural formality. "It is a mandatory prerequisite to the issuance of a default judgment."<sup>2</sup>

The party requesting an Entry of Default should file a "Request for Entry of Default by the Clerk" with an affidavit, or other declaration made under penalty of perjury, attached that sets forth the following facts:

1. Date of service of the complaint.
2. Date of issuance of the summons.
3. Date of filing of an affidavit of service.
4. Date a responsive pleading was due by virtue of Fed. R. Bankr. P. 7012 or any order of the Court.
5. Statement that no answer or motion has been received by the date set by Fed. R. Bankr. P. 7012 or an order of the Court.
6. Statement that the party against whom default is requested is not a minor or incompetent person, as required by Fed. R. Civ. P. 55(b)(1).
7. Statement, pursuant to the Servicemembers Civil Relief Act, "(A) stating whether or not the defendant is in the military service *and showing necessary facts to support the affidavit*; or (B) if the plaintiff is unable to determine whether or not the defendant is in the military service, stating that the plaintiff is unable to determine whether or not the defendant is in the military service."<sup>3</sup>

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<sup>1</sup> See 10 James Wm. Moore et al., Moore's Federal Practice § 55.10[1] (3d ed. 2001).

<sup>2</sup> *Id.* § 55.12[3][a].

<sup>3</sup> 50 App. U.S.C.A. § 521 (emphasis added).

Local Rule 7055-1(A)(1) includes the specific requirements for an Entry of Default. A "Request for Entry of Default by the Clerk" form, including a form affidavit, is available on the Court website at [Local Form 7055-1A](#).

## **STEP TWO: Default Judgment**

The party seeking a default judgment should file a "Motion for Default Judgment" that sets forth that the party seeking default judgment is entitled to the relief sought based upon a proper showing of each element of each claim. The party requesting default judgment should also submit a proposed default judgment to the judge's e-mail orders box.<sup>4</sup>

The Court will determine whether or not judgment should be entered and may set the matter for hearing in order to make such determination.<sup>5</sup> If, in order to enable the Court to enter judgment, it is necessary to conduct an accounting, determine the amount of damages, establish the truth of any averment by evidence, or investigate of any other matter, the Court may conduct such hearings or order such referrals as it deems necessary and proper.<sup>6</sup> The Court may enter a default judgment without a hearing only if the amount claimed is a liquidated sum or one capable of mathematical calculation.<sup>7</sup>

In very limited circumstances, default judgment may be entered by the Clerk under Rule 55(b)(1), i.e. only if the complaint seeks a sum certain and the plaintiff files a request for entry of default judgment with an affidavit of the amount due. *See* Fed. R. Civ. P. 55(b)(1).<sup>8</sup> However, in all other circumstances, Rule 55(b)(2) requires that default judgment

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<sup>4</sup>*See* Bankr. N.D. Okla. CM/ECF Administrative Guide of Policies & Procedures, § XIII and Local Rule 9072-1.

<sup>5</sup> The Court may require an actual evidentiary hearing when a party seeks a default judgment on allegations of fraudulent intent. *See, e.g., AT&T Universal Card Services, Corp. v. Sziel (In re Sziel)*, 206 B.R. 490 (Bankr. N.D. Ill. 1997) (expressing the court's reluctance to "rubber stamp" default judgment motions when allegations of fraudulent intent are conclusory). Even if the party against whom default is requested fails to appear at such hearing, the movant must present evidence of fraud and the requisite intent. *See, e.g., FCC Nat'l Bank v. Roberts (In re Roberts)*, 193 B.R. 828 (Bankr. W.D. Mich. 1996) (credit card company denied default judgment because it failed to produce evidence of debtor's intent to defraud).

<sup>6</sup> *See* Fed. R. Civ. P. 55(b).

<sup>7</sup> *See Hunt v. Inter-Globe Energy, Inc.*, 770 F.2d 145 (10th Cir. 1985).

<sup>8</sup> A "sum certain" is an amount that can be fixed by simple calculation or that can be determined by documentation such as an invoice. (A claim for a specific amount does not make the sum certain, *see World Alliance Consulting, Inc. v. DocPlanet.com, Inc.*, 57 Fed. App. 390 (10th Cir. 2003)).

be entered by the Court. For instance, when a party against whom default is requested has served an answer or motion and then fails to appear at a court hearing, when relief other than money damages is requested, or when evidence is required to establish elements of claims or damages, default judgment, if appropriate, must be entered by the Court.

Rule 55(b) requires that a defendant who has appeared in the action be served with written notice of the motion for default judgment at least seven days prior to the hearing on such motion for a default judgment.

A form of "Motion for Default Judgment" is available on the Court website at [Local Form 7055-1B](#). A form of "Default Judgment" is available at [Local Form 7055-1C](#).